HIGH COURT OF CHHATTISGARH; BILASPUR

WRIT PETITION NO. 2422 OF 2004

PETITIONER: Smt. Indira Sahu

Versus

RESPONDENTS State of CG and another.

POST FOR ORDERS 16-4-2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION) NO. 2422 OF 2004

PETITIONER

Smt. Indira Sahu, W/o. Shri S.K. Sahu, aged about 32 years, working as Anganbadi Worker (Terminated), R/o. Village - Nardha, Kasdol, Raipur, CG.

Versus

RESPONDENTS

1) State of Chhattisgarh, through the Secretary Department of Panchayat, Mantralaya, D.K.S. Bhawan, Shastri Chowk, Raipur, CG.

2) Janpad Panchayat, Kasdol, through its Chief Executive Officer, Kasdol, Raipur, CG.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATUE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER DIRECTION OR ORDER.

SB: HON'BLE SHRI JUSTICE SATISH K. AGNIHOTRI.

PRESENT:

Shri Sandeep Dubey counsel for the petitioner.
Shri Sushil Dubey, Govt. Advocate for respondent No.1.

ORDER

(Passed on 16th April 2007)

1. By this petition, the petitioner challenges legality and validity of the impugned resolution dated 19-7-2004 (Annexure P/2) passed by Janpad Panchayat, Kasdol, District Raipur and consequential order dated 20-7-2004

(Annexure P/3) passed by the Chief Executive Officer, Janpad Panchayat, Kasdol.

2. The facts in nutshell are that the petitioner was appointed as Anganbadi worker of Gram Panchayat, Nardha. On the basis of news report published in the newspaper dated 11-7-2004 (Annexure P/1) that the porridge meant for distribution by the Anganbadi was found sold in the open market as flour. The Janpad Panchayat, Kasdol, without issuing any show cause notice to the petitioner passed a resolution dated 19-7-2004 (Annexure P/2) to remove the petitioner from the post of Angandbadi worker and a consequential order dated 20-7-2004 (Annexure P/3) was passed.

3. Learned counsel appearing for the petitioner would submit that the order being penal in nature and having evil consequences cannot be passed without following principles of natural justice and fair play in action, thus, the impugned resolution and the impugned order are vitiated.

4. Per contra, learned counsel appearing for respondent No.1 would submit that preliminary enquiry was made, however, no notice was given to the petitioner and preliminary enquiry was made to find out true facts. Notice is not necessary when there are certain allegations of this nature.

5. Despite notice duly served on respondent No.2, none appears nor any representation is made on behalf of respondent No.2.

6. Having heard learned counsel for the parties, perused pleadings and documents appended thereto, it is evident that the impugned resolution and the impugned order was passed without following principle of natural justice.

7. The punitive order visiting with evil consequences cannot be passed without affording an opportunity of hearing to the employee to put-forth his/her case.

8. Hon'ble the Supreme Court in the matter of ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant***[1], **observed as under:**

> "While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action".

9. Admittedly, in the present case, the impugned resolution (Annexure P/2) and the impugned order (Annexure P/3) were passed without affording any opportunity of hearing to the petitioner. Thus, the said resolution dated 19-7-2004 (Annexure P/2) and the impugned order dated 20-7-2004 (Annexure P/3) are vitiated as it is a case of flagrant violation of principles of natural justice.

10. Thus, in view of the foregoing and for the reasons stated hereinabove this petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju

,(2001) 1 SCC 182